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MEMORANDUM



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AZ CORP COMMISSION  
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TO: Docket Control Center

FROM: Ernest G. Johnson  
Director  
Utilities Division

*EA for EGJ*

DATE: July 17, 2009

RE: IN THE MATTER OF THE APPLICATION OF TALK AMERICA, INC. D/B/A CAVALIER TELEPHONE ALSO D/B/A CAVALIER BUSINESS COMMUNICATIONS VOLUNTARY CANCELLATION OF ITS CERTIFICATE OF CONVENIENCE TO PROVIDE FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICE (DOCKET NO. T-03342A-07-0612)

Attached is the Staff Report of the above Application to cancel the Certificate of Convenience and Necessity ("CC&N") to provide facilities-based local exchange telecommunications service held by Talk America, Inc. d/b/a Cavalier Telephone d/b/a Cavalier Business Communications.

Staff recommends cancellation of the CC&N to provide facilities-based local exchange telecommunications service. Staff also recommends the cancellation of the CC&N to provide resold local exchange telecommunications service.

EGJ:JFB:kdh

Originator: John F. Bostwick

Attachment: Original and Thirteen

Arizona Corporation Commission  
DOCKETED

JUL 17 2009

DOCKETED BY	<i>MM</i>
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SERVICE LIST FOR: Talk America, Inc. d/b/a Cavalier Telephone d/b/a Cavalier Business  
Communications

DOCKET NO.: T-03342A-07-0612

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STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION


TALK AMERICA, INC. D/B/A CAVALIER TELEPHONE D/B/A  
CAVALIER BUSINESS COMMUNICATIONS  
DOCKET NO. T-03342A-07-0612

IN THE MATTER OF THE APPLICATION OF TALK AMERICA, INC. D/B/A CAVALIER  
TELEPHONE ALSO D/B/A CAVALIER BUSINESS COMMUNICATIONS VOLUNTARY  
CANCELLATION OF ITS CERTIFICATE OF CONVENIENCE TO PROVIDE FACILITES-  
BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICE

JULY 17, 2009

## STAFF ACKNOWLEDGMENT

The Staff Report for Talk America, Inc. d/b/a Cavalier Telephone d/b/a Cavalier Business Communications, Docket No. T-03342A-07-0612, was the responsibility of the Staff member listed below. John F. Bostwick was responsible for the review and analysis of Talk America, Inc. d/b/a Cavalier Telephone d/b/a Cavalier Business Communications' application to cancel its Certificate of Convenience and Necessity.

  
\_\_\_\_\_  
John F. Bostwick  
Administrative Services Officer II

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### **Introduction**

On October 19, 2007, Talk America, Inc. d/b/a Cavalier Telephone d/b/a Cavalier Business Communications ("Talk America" or "Applicant") submitted an Application to cancel its Certificate of Convenience and Necessity ("CC&N") to provide facilities-based local exchange telecommunications service. The Applicant also stated in its Application that it will continue to provide resold interexchange telecommunications services granted in Docket No. T-03342A-97-0129.

The Application filed was deemed insufficient and Staff sent its First Set of Data Requests to the Company on December 21, 2007. The Applicant responded to Staff's data requests on May 19, 2008.

### **Background**

On February 19, 1999, the Commission, in Decision No. 61537, originally granted a CC&N to the Applicant to provide resold local exchange telecommunications services in Arizona. The Commission, in Decision No. 64084, granted a CC&N to the Applicant to provide resold interexchange telecommunications services in Arizona on October 4, 2001. On February 13, 2004, the Commission, in Decision No. 66788, granted a CC&N to the Applicant to provide facilities-based local exchange telecommunications services in Arizona.

### **Staff's Analysis**

The Applicant stated in its Application that it does not serve any local exchange customers in Arizona. According to Talk America's Response to Staff's Data Request JFB1-2, Talk America made changes to its business plans and never initiated sales of resold or facilities-based local exchange telecommunications services in Arizona. Staff has confirmed that Talk America's Annual Report filed for the year ended December 31, 2007 (and all prior Annual Reports), indicates that there were no Arizona access lines in service to provide facilities-based local exchange. Also, Talk America attests through its Response to Staff Data Request JFB1-4a that it continues to provide no local exchange services in Arizona. The Applicant is not discontinuing any telecommunications services that it previously provided or currently provides in Arizona. The Applicant further stated in its Application that it will continue to provide resold interexchange telecommunications services.

In its Application, Talk America stated that it does not have any outstanding obligations in the form of advance payments or deposits. In its Response to Staff Data Request JFB1-7, Talk America stated no advances, deposits, or prepayments have never been collected for local exchange services in Arizona. As a result, a deposit refund plan pursuant to Arizona Administrative Code ("A.A.C.") R14-2-503 (B) is not required in this matter.

Talk America stated in its Application that it wants to cancel its Arizona Tariff No. 6. The Applicant's Arizona Tariff No. 6 on file with the Commission covers local exchange telecommunications services. In addition, Talk America requested that it be relieved of its obligation to maintain a \$100,000 performance bond to provide facilities-based local exchange telecommunications services in Arizona. Talk America stated in its Response to Staff Data Request JFB1-14 that it desired to cancel all of its Arizona tariffs on file, except Arizona Tariff No. 5. If the Commission approves the cancellation of its CC&Ns to provide resold and facilities-based local exchange services, Staff believes the requirement that Talk America maintain a \$100,000 performance bond should be cancelled. Staff also believes that Talk America's Arizona Tariff Nos. 2, 3, 4, 6, and 7 should be cancelled.

Talk America reported, in its Response to Staff Data Request JFB1-10, that as of December 31, 2007, it provided resold interexchange service to 496 presubscribed customers in Arizona. The Applicant's Arizona Tariff No. 5 on file with the Commission applies to resold interexchange telecommunications services. Talk America does not require deposits or advances payments from its customers as stated in its Arizona Tariff No. 5, Page 15, Sections 2.9 and 2.10 respectively. Staff reviewed Talk America's Arizona Tariff No. 5 and determined that Talk America does not collect prepayments. As a result, Talk America does not need to maintain a performance bond or an irrevocable sight draft letter of credit to continue providing resold interexchange telecommunications services in Arizona. Talk America's Arizona Tariff No. 5 should not be cancelled.

In its Response to JFB1-15, Talk America indicated that it is not currently providing alternative operator services. It also stated that it never provided alternative operator services in Arizona.

The Applicant did not publish legal notice of the Application because it never provided resold or facilities-based local exchange telecommunications services to any customers in Arizona. Since no Arizona customers received local exchange telecommunications services from Talk America, the Applicant did not notify customers or provide a list of alternative telecommunication carriers to the Commission as required in A.A.C. Rule R14-2-1107 A.

In its Response Staff Data Request JFB1-11, the Applicant stated that LDMI Telecommunications, Inc. d/b/a Cavalier Telephone d/b/a Cavalier Business Communications ("LDMI") is an affiliate of Talk America. LDMI's 2007 Annual Report to the Utilities Division states that LDMI provides presubscribed resold interexchange services to customers in Arizona. These services are similar to the resold interexchange services offered by Talk America. According to its Response to Staff Data Requests JFB1-13, Talk America provides toll services to customers in Arizona which can be terminated to locations in any other state and to international locations. In addition, the Applicant stated that it does not have any employees and does not have facilities in Arizona (refer to the Applicant's Response to Staff Data Requests JFB1-16 and JFB1-17 respectively). The Applicant further noted in its Response to Staff Data Request JFB1-18, that it does not have any service contracts with Arizona customers.

The Consumer Services Section of the Utilities Division reports that there have been thirteen complaints filed against the Applicant from January 1, 2005 through October 29, 2008. Five billing, one disconnect/termination, and one unauthorized carrier complaints were filed in 2005. In 2006, two billing and one unauthorized carrier complaints were filed against Talk America. No complaints, inquiries, or opinions were filed in 2007. From January 1, 2008 to October 29, 2008, the three complaints filed are as follows: one unauthorized carrier, marketing practices, and a disconnect. Each of the 13 complaints has been resolved and closed. There have been no inquiries or opinions filed against Talk America. In addition, Consumer Services stated that Talk America is in good standing with the Corporations Division of the Commission as of October 29, 2008.

Compliance and Enforcement Section of the Utilities Division, in a Memorandum dated October 29, 2008, indicates that the Applicant has met its compliance requirement. It does not have any compliance delinquencies.

Since there are other carriers offering similar services as Talk America, Staff believes that approval of Talk America's request to discontinue its authority to provide local exchange service is in the public interest. Talk America, Inc. d/b/a Cavalier Telephone d/b/a Cavalier Business Communications' request to cancel its CC&N to provide resold and facilities-based local exchange telecommunications service should be approved by the Commission.

### **Recommendations**

Staff recommends approval of Talk America, Inc. d/b/a Cavalier Telephone d/b/a Cavalier Business Communications' Application for authority to cancel its CC&N to provide resold and facilities-based local exchange telecommunications services in Arizona.

Staff further recommends that Talk America's Arizona Tariff Nos. 2, 3, 4, 6, and 7 be cancelled. Staff also recommends that Talk America be allowed to cancel its \$100,000 dollar performance bond upon cancellation of its CC&N to provide resold and facilities-based local exchange telecommunications services in Arizona.

Upon cancellation of its CC&N, Talk America, Inc. d/b/a Cavalier Telephone d/b/a Cavalier Business Communications' will no longer be authorized to provide resold and facilities-based local exchange telecommunications services in Arizona and therefore, will no longer be subject to the requirements of Decision Nos. 61537 and 66788.